



The McMillan Firm[™]
240 W 35th Street Suite 405
New York, NY 10001

August 11, 2020

VIA ECF

The Honorable Katherine P. Failla
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

MEMO ENDORSED

Re: Mavrix Photo, Inc. v. Source Digital, Inc., et al.
(20-cv-01590-KPF)

Dear Judge Failla:

On behalf of Defendant Source Digital, Inc. (“SDI”) this letter brief is submitted in response to Plaintiff, Mavrix Photo, Inc.’s letter motion filed on August 6, 2020 (the “Letter Motion,” Dkt. no. 22). Plaintiff’s counsel appears to have filed the motion pursuant to Your Honor’s Individual Practices Rule 2(c) and/ or 3(c) seeking a pre-motion conference to “move discovery along.” As set forth below, SDI is actively working, in good faith, towards completing discovery in accordance with the deadlines set forth in Your Honor’s Case Management Plan, and SDI respectfully submits that no pre-motion conference is necessary at this time.

As briefly referenced in Plaintiff’s Letter Motion, SDI has not had access to its office, nor the majority of SDI’s documents due to COVID-19. Staff members have not been comfortable returning to work, yet SDI has been committed to finding solutions and reasonable means towards complying with discovery deadlines set forth in the Case Management Plan. In addition to trying to gather responsive documents, SDI’s counsel have (i) responded to Plaintiff’s July 30, 2020 meet and confer letter; (ii) confirmed SDI’s availability to be deposed on August 26, 2020 per Plaintiff’s Notice of Deposition; (iii) provided draft comments to Plaintiff’s proposed Protective Order and (iv) committed to a document production schedule following finalization and approval of the Protective Order.

Although Mavrix’s Letter Motion appears to criticize SDI for failing to produce documents, and for the alleged delay between the written responses and the production of responsive documents, Mavrix has itself failed to produce a single document to date. Further, although Plaintiff’s counsel provided its written responses to Defendants’ Request for Production of Documents on July 13, 2020, it was not until August 5, 2020 (the day prior to

The Honorable Katherine Failla
August 11, 2020
Page 2 of 2

filing Plaintiff's Letter Motion), that Plaintiff's counsel wrote to inform SDI that Plaintiff would not be producing documents until a Protective Order was entered into.

Notwithstanding the ongoing challenges the parties are facing due to COVID-19, including limited staff and resources, SDI remains committed to completing discovery and working with Mavrix's counsel to that end. Due to the efforts and actions taken by SDI outlined above, SDI does not believe that the pre-motion conference sought in Plaintiff's Letter Motion is necessary at this time, as parties are moving to complete discovery in the timeframe set forth in the Case Management Plan. SDI therefore requests that this Court deny Plaintiff's Letter Motion. The current pandemic are all matters beyond the control of SDI and Plaintiff should reasonably understand the same.

Respectfully submitted,

THE MCMILLAN FIRM

By: /s/ L. Londell McMillan
L. Londell McMillan
240 West 35th Street, Suite 405
New York, New York 10001
(646) 559-8314
llm@thenorthstargroup.biz

The Court is in receipt of Plaintiff's letter requesting a pre-motion conference regarding certain discovery issues (Dkt. #22), and Defendant's response (Dkt. #23). Having carefully considered the parties' submissions, and based on Defendant's representations, the Court does not believe that a pre-motion conference is necessary at this time. Defendant appears to be responsive and undertaking its discovery obligations in good faith, despite the ongoing pandemic. Accordingly, Plaintiff's request for a pre-motion conference is DENIED. With that said, the Court notes that fact discovery is due to be completed in less than a month, and the Court is loath to extend discovery deadlines. If the parties believe that an extension is going to be necessary, it would be wise to inform the Court of that possibility in advance.

Dated: August 12, 2020
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE